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Ad Hoc Committee for the Negotiation of a Convention against Corruption
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Programme of the technical workshop on asset recovery, to be held in Vienna on 21 June 2002

Note by the Secretariat*

I. Introduction

1. At its first session, the Ad Hoc Committee for the Negotiation of a Convention against Corruption approved the proposal of Peru regarding the organization of a workshop on the question of asset recovery and authorized the Secretariat to organize that workshop for one day during the second session of the Ad Hoc Committee.

2. It was decided that the purpose of the workshop would be to provide interested participants with technical information and specialized knowledge on the complex issues involved in the question of asset recovery. Therefore, it was agreed that the workshop would not lead to any formal conclusion. In addition, the Ad Hoc Committee decided that the programme and format of the technical workshop would be finalized by the bureau of the Ad Hoc Committee and that the workshop, to be held on 21 June 2002, would benefit from the facilities available to the Ad Hoc Committee, in particular by being provided with simultaneous interpretation in the official languages of the United Nations.

3. The bureau of the Ad Hoc Committee held a meeting in Vienna on 2 April 2002 and approved the proposals of the Secretariat regarding the format and programme of the technical workshop. It was decided that the Secretariat would invite 10 panellists, selected by the Secretariat with due regard for equitable geographical representation, to make presentations and animate the discussion.

* The delay in submitting the present document was because of the finalization of the list of panellists for the workshop.

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4. The bureau indicated that the panellists were to be selected and invited in their individual capacity. In this connection, the Secretariat has drawn on information provided by Governments in response to its request made pursuant to Economic and Social Council resolution 2001/13 of 24 July 2001.

5. It was also decided that the discussion at the workshop would be structured along major thematic areas corresponding to the phases of a hypothetical case study and that each phase of the case study would be assigned to panellists, who would be asked to make brief presentations at the workshop. Following the presentations and comments by other panellists, questions from the floor and discussion would be invited.

6. The programme of the workshop is provided in section II below. The hypothetical case study is contained in the annex.

7. The list of the panellists of the workshop will be issued as an addendum to the present document.

II. Programme of the workshop

8. The programme of the workshop is as follows:

10 a.m.-noon

Introductory remarks by the Chairman of the Ad Hoc Committee for the Negotiation of a Convention against Corruption

Presentation of the hypothetical case study

1. Transfer abroad of funds or assets of illicit origin, efforts to identify the location of such funds or assets and confiscation

(a) Investigation of underlying criminality

(b) Tracing of funds or assets transferred abroad, in particular the identification, collection and preservation of evidence originating in the country of origin

(c) Criminal proceedings against the suspect in the country of origin

(d) Obtaining freezing or seizure orders abroad

(e) Role and obligations of financial institutions

(f) Identification of the countries to approach with regard to the location of illicit funds and assets

(g) Identification of the legal framework for international cooperation, including identification of gaps in existing legislation related to international judicial cooperation and ways to overcome them, as well as normative and procedural incompatibilities

(h) Legal framework for cooperation and other necessary conditions for freezing and seizure measures to prevent the further transfer of funds or assets (evidentiary requirements etc.)

(i) Legal framework for cooperation and other necessary conditions for confiscation measures

(j) Possibility of civil and administrative action to freeze, seize and recover funds or assets

(k) Division of labour between the country of origin and the countries where the funds or assets have been located

(l) Technical assistance: (i) identification of areas and modalities for providing technical assistance to countries in order to improve investigation and judicial capacity in cases related to the recovery of transferred funds or assets of illicit origin; and (ii) problem of financing a case to recover funds or assets of illicit origin (identification of possible sources and modalities for assisting developing countries)

Noon-1 p.m. Comments by panellists, questions from the floor and discussion

3 p.m.-4.30 p.m. 2. Return of funds or assets of illicit origin

(a) Identification of beneficiaries

(b) Legal requirements for the return of funds or assets to the beneficiaries

(c) Ways and means of streamlining cases involving asset recovery

(d) Possible use of asset-sharing mechanisms for disposition of the proceeds to foreign countries in order to avoid arguments about who "owns" what

(e) The issue of competing claims between the country of origin and natural and legal persons

(f) Legal remedies applicable to the offender or (bona fide) third parties in the country or countries concerned in cases involving the return of funds or assets

(g) Division of costs, imposition of taxes etc.

4.30 p.m.-5 p.m. 3. Prevention of the transfer of funds or assets of illicit origin

(a) Identification of possible early warning systems

(b) Implementation at the national level of existing international provisions and obligations for banks and other financial institutions (i.e. "due diligence")

(c) Other preventive measures, including capacity-building for specialization of prosecutors and judges in dealing with cases involving the transfer of funds or assets of illicit origin

5 p.m.-6 p.m. Comments by panellists, questions from the floor and discussion

Annex

Hypothetical case study

1. The former President of country X, before being forced from office, transferred millions of dollars to other countries. The money was transferred through a series of different accounts held in different names in different countries (i.e. A, B, C, D and E). After three years, the former President purchased a villa in country A. Some, but not all, of the missing money is in country A as well. More money is in countries B and C, but a substantial amount is still unaccounted for.

2. The authorities in country X have begun to investigate the origin of the money and have uncovered some relevant witnesses and documents. However, those efforts have been hampered by witnesses not being willing to testify publicly and by the absence of proper documentation in both the public and private sectors. During the former President's Administration, there were virtually no record-keeping, accounting, financial disclosure or other such requirements. An initial attempt to open a criminal case was blocked when a judge appointed by the former President's Administration dismissed all charges as baseless. The authorities of country X are seeking from countries through which the money may have passed bank records that could help to clarify relevant transactions, as well as corporate records that might confirm payment of bribes and other relevant transactions.

3. Based on the evidence gathered so far, the origin of the money held by the former President can be broken down roughly as follows:

$10 million taken directly from the State Treasury over which the former President, during his Administration, had direct signature authority by law

$10 million accepted by the former President during his Administration as bribes from foreign companies for state contracts in country X (some of that money was paid directly into foreign bank accounts and never entered country X)

$10 million in profits from a company in which the former President's son was a majority owner and to which the former President directed numerous state construction contracts during his Administration

$10 million in proceeds from a drug trafficking operation that the former President, during his Administration, allowed to operate in country X with his protection

$10 million diverted by the former President, during his Administration, from various bilateral and multilateral assistance and development projects in country X

$10 million from investments in a now defunct oil exploration venture that was partially run by the State and that, after having attracted foreign and domestic investors, failed because the former President diverted a significant part of its capital during his Administration

$60 million of unknown origin